Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1995

ERNEST PURNELL REYNOLDS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Special Appeals Of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE COURT OF SPECIAL APPEALS OF MARYLAND ERR IN UPHOLDING THE TRIAL COURT'S FINDING THAT PROBABLE CAUSE EXISTED FOR THE WARRANTLESS ARREST OF PETITIONER?

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PETITION FOR WRIT OF CERTIORARI

Ernest Purnell Reynolds, Jr., Petitioner, by his attorney, Brian J. Murphy, requests that a writ of certiorari be issued to review the judgment of the Court of Special Appeals of Maryland entered on February 8, 1995 in Ernest Purnell Reynolds, Jr. v. State of Maryland, No. 789, September Term 1994. (Unpublished, Per Curiam).

OPINIONS BELOW

1. Opinion of the Court of Special Appeals of Maryland in Ernest Purnell Reynolds, Jr. v. State of Maryland, No. 789, September Term, 1994, filed February 8, 1995. (Unreported, Per Curiam). (Reproduced in the appendix at pages 1-7).

2. Order of the Court of Appeals of Maryland denying petition for writ of certiorari in Ernest Purnell Reynolds, Jr. v. State of Maryland, Petition Docket No. 67, September Term, 1995, filed July 17, 1995 (Reproduced in the appendix at page 8).

3. Oral opinion of the Honorable John G. Turnbull, State of Maryland v. Ernest Reynolds, Case No. 93-CR-3246, Circuit Court for Baltimore County, April 12, 1994. (Reproduced in the appendix at pages 9-11).

STATEMENT OF JURISDICTION

Petitioner asks that this Court review the judgment of the Court of Special Appeals of Maryland entered on February 8, 1995. Discretionary review by the Court of

Appeals of Maryland, the state court of last resort, was denied on July 17, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

PERTINENT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but on probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

The facts of this case were developed at a suppression hearing held on April 12, 1994 in the Circuit Court for Baltimore County. At the suppression hearing, Baltimore County Police Detective Rodney Heavner testified that he was told by an Agent Bonner of the FBI that an informant had related information to him about a drug organization in Baltimore County involving, among others, an individual named Ernest Reynolds. Reynolds drove a tan or gold Mazda RX 7 and was reported to live with another subject, "NA," at Rambling Ridge Circle, Apartment 301, which was used as a "stash house." The name of the lessee of the apartment was stated to be Denise Actie. The informant further reported that each

day between 7:00 a.m. and 10:00 a.m., Reynolds and "NA" would leave the apartment to sell drugs in Baltimore City. The alleged source of the drugs was an individual named Willie Banks whose address was 119 Village Mill Court.

On July 26, 1993, three days after receiving that information, Detective Heavner and several other officers set up a surveillance on Rambling Ridge Circle. Detective Heavner testified that he observed a gold Mazda RX 7 with Maryland registration ANH-238 sitting approximately three hundred yards away from Apartment 301, 1803 Rambling Ridge Circle. The name on the mailbox for that apartment was "Actie." A registration check revealed that the Mazda was registered to Ernest Purnell Reynolds, Jr. (the Petitioner). At exactly 10:00 a.m., the surveillance team observed a black male and a black female come out of 1803 Rambling Ridge, get into the Mazda, and drive to a convenience store in Baltimore City.

On August 3, 1993, Detective Heavner again spoke with FBI Agent Bonner, who told Detective Heavner that the informant had advised him that the Petitioner was getting his drug supply from a person with the street name, "Card," who drove a cream-colored Infiniti with temporary tags. According to the informant, the Petitioner would hide the heroin under the dash of the Mazda. The informant also stated that one of the distribution centers in Baltimore City was at 1909 Pulaski Street and the the Infiniti normally sat in front of 119 Village Mill Court.

On August 20, 1993, Detective Heavner met with the informant and was told by him that the Petitioner and "NA" were still taking drugs, namely heroin and cocaine, from Apartment 301, Rambling Ridge, into Baltimore City, on a daily basis, between 7:00 and 10:00, and that Mondays and Tuesdays were the days that they would have the most drugs. On Tuesday, August 24, 1993, based on information from the informant as well as from the previous surveillance, Detective Heavner set up a surveillance at the same location. The Petitioner was observed getting into the Mazda at approximately 9:15 a.m. The police followed the Petitioner for a distance and stopped him, whereupon he was arrested after a K-9 dog alerted for the presence of drugs in the vehicle. After the arrest, Petitioner's vehicle was searched; no drugs, however, were found. Petitioner was questioned by the police and gave information which led to the arrest of a co-defendant, Tyrone McCullough, and the seizure of 73 bags of heroin from McCullough.

Based upon the information received from the informant, the surveillance, but especially on the information obtained from Petitioner and co-defendant McCullough after their arrest, a search warrant was obtained for Apartment 301, 1803 Rambling Ridge Circle. Incriminating evidence was found in the search.

Pointedly, prior to the stop and arrest of Petitioner, no drugs of any nature were observed or seized. In addition, although Detective Heavner was told by Agent Bonner that the informant was "cooperative and reliable," no evidence whatsoever was presented as to either the background of the informant or the informant's basis of knowledge.

The trial court denied Petitioner's motion to suppress, ruling that the arrest was lawful under the Fourth Amendment and that the fruits of the search and questioning that followed did not taint the subsequent search and seizure warrant. *See* oral opinion of the Honorable John G. Turnbull, State of Maryland v. Ernest Reynolds, Case No. 93-CR-3246, Circuit Court for Baltimore County, April 12, 1994. (Reproduced in the appendix at pages 9-11). On direct appeal, the Court of Special Appeals of Maryland similarly rejected Petitioner's argument that Petitioner's arrest lacked probable cause as required by the Fourth Amendment. That court, consequently, upheld the trial court's denial of Petitioner's motion to suppress the fruits of a later search warrant which was based on evidence gathered as a result of that arrest. *See* opinion of the Court of Special Appeals of Maryland in Ernest Purnell Reynolds Jr. v. State of Maryland, No. 789, September Term, 1994, Filed February 8, 1995 (Unreported, Per Curiam). (Reproduced in the appendix at pages 1-7)

ARGUMENT

THE COURT OF SPECIAL APPEALS OF MARYLAND ERRED IN UPHOLDING THE TRIAL COURT'S FINDING THAT PROBABLE CAUSE EXISTED FOR THE WARRANTLESS ARREST OF PETITIONER.

It is a cardinal principle of Fourth Amendment law that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978).

One such exception is a search incident to a lawful arrest. *United States v. Robinson*, 414 U.S. 218, 235 (1973). For an arrest to be lawful, however, the police must have probable cause, that is, it must be shown that "at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91 (1964). "It is basic that an arrest with or without a warrant must stand on firmer ground than mere suspicion . . . " *Wong Sun v. United States*, 371 U.S. 471, 479 (1963). This is so because "[t]he history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice.' " (footnotes and citations omitted). *Id.*

In the instant case, the Court of Special Appeals of Maryland cited, as a basis for its decision, several decisions of this Court. The Maryland court, however, woefully misapplied the teachings of this Court in those cases by extracting catch phrases from factual and legal scenarios inapposite to those in the instant case.

First, three of the cited cases – *Adams v. Williams*, 407 U.S. 143 (1972), *United States v. Sokolow*, 490 U.S. 1 (1989), and *Alabama v. White*, 496 U.S. 325 (1990) – did not involve the issue in the instant case: probable cause for a warrantless arrest. Rather, those cases involved a "reasonable articulable suspicion" stop and frisk under this Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). Those cases, thus, do not support the Maryland court's decision.

Second, two of the cited cases – *Illinois v. Gates*, 462 U.S. 213 (1983), and *Massachusetts v. Upton*, 466 U.S. 727 (1984) – involved a search pursuant to a warrant and the standard of review of a magistrate's finding of probable cause. Those cases, likewise, do not support the Maryland court's decision.

As for the other decision of this Court cited by the Maryland court – *Draper v. United States*, 358 U.S. 307 (1959) – the holding of that decision was likewise misapplied. In *Draper*, this Court noted, and found important, the fact that the informant, Hereford, had been engaged as a "special employee" of the Bureau of Narcotics at Denver for about six months and had previously given accurate an reliable information to Marsh, the federal narcotics agent who testified at the suppression hearing. *Id.* at 309.

In contrast, the informant in the instant case was not named nor was his/her "track record" as an informant detailed. Further, the basis for the informant's asserted knowledge that Petitioner would be carrying drugs was never explained. This Court has reaffirmed that considerations such as an informant's "veracity," "reliability," and "basis of knowledge" are all "highly relevant in determining the value of his report." *Gates, supra* at 230. Without such considerations affirmatively appearing in the record, the informant's tip in the instant case is of no more value than the observations of any person who may have seen Petitioner drive away from his home at the same time every day. Such innocent conduct is hardly the basis for an arrest based on probable cause.

Petitioner therefore asserts that a "state court" has "decided a federal question in a way that conflicts with applicable decisions of this court." Supreme Court Rule 10.1. (c). Accordingly, there are "special and important reasons" for granting the requested writ of certiorari; Petitioner, therefore, respectfully urges this Court to grant the writ.

CONCLUSION

For the aforegoing reasons, Petitioner respectfully requests that a writ of certiorari be issued to the Court of Special Appeals of Maryland.

Respectfully submitted,

BRIAN J. MURPHY
Counsel for Petitioner

APPENDIX

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 789

September Term, 1994

ERNEST PERNELL [sic] REYNOLDS, JR.

v.

STATE OF MARYLAND

Wilner, C. J.,
Bishop,
Hollander,

JJ.

Per Curiam

Filed: February 8, 1995

Ernest Pernell [sic] Reynolds, Jr., the appellant, was convicted in a non-jury trial in the Circuit Court for Baltimore County of possession of cocaine with intent to distribute. The question presented on appeal is whether the court erred in denying the appellant's motion to suppress.

FACTS

In reviewing the denial of a motion to suppress under Maryland Rule 4-252, we look only to the record of the suppression hearing. We do not consider the record of the trial. *Trusty v. State*, 308 Md. 658, 670 (1987) (quoting

Jackson v. State, 52 Md. App. 327, 332 n.5, *cert. denied*, 294 Md. 652 (1982). In considering the evidence presented at the suppression hearing, we extend great deference to the fact finding of the suppression hearing judge with respect to determining the credibility of the witnesses and to weighing and determining first-level facts. *Watson v. State*, 282 Md. 73, 84, *cert. denied*, 437 U.S. 908 (1978), *Perkins v. State*, 83 Md. App. 341, 346 (1990). *Lancaster v. State*, 86 Md. App. 74, 95 (1991), *aff'd*, 332 Md. 385 (1993). When conflicting evidence is presented, we accept the facts as found by the hearing judge unless it is shown that his findings are clearly erroneous. *Riddick v. State*, 319 Md. 180, 183 (1990). *McMilian v. State*, 325 Md. 272 (1992). We then make our own independent constitutional appraisal of the facts. *See Riddick v. State*, 319 Md. at 183; *Perkins*, 83 Md. App. at 346.

At the suppression hearing, Detective Rodney Heavner testified that he was told by FBI Agent Bonner that a cooperative and reliable informant had related information to him about a drug organization in Baltimore County involving, among others, an individual named Ernest Reynolds, who drove a tan or gold Mazda RX-7. Reynolds was reported to live with another subject, "NA", at Rambling Ridge Circle, Apartment 301, which was used as a stash house. The name of the lessee of the apartment was stated to be Denise Actie. The informant further reported that each day between 7:00 a.m. and 10:00 a.m., Reynolds and "NA" would leave the apartment to sell drugs in Baltimore City. The alleged source of the drugs was an individual named Willie Banks whose address was 119 Village Hill Court.

On July 26, 1993, three days after receiving that information, Detective Heavner and several other officers set up a surveillance on Rambling Ridge Circle. Detective Heavner testified that he observed a gold Mazda RX-7 with Maryland registration ANH-238 sitting approximately three hundred yards away from Apartment 301, 1803 Rambling Ridge. The name on the mailbox for that apartment was "Actie". A registration check revealed that the Mazda was registered to Ernest Pernell [sic] Reynolds, Jr., (the appellant). At exactly 10:00 a.m., the surveillance team observed a black male and a black female come out of 1803 Rambling Ridge, get into the Mazda, and drive to a convenience store in Baltimore City. Detective Heavner testified that based on the officers' training, knowledge, and experience, they believed a "drug drop-off" to be in progress.

On August 3, 1993, Detective Heavner again spoke with FBI Agent Bonner, who told Detective Heavner that the informant had advised him that the appellant was getting his drug supply from a person with the street name, "Card", who drove a cream-colored Infinity with temporary tags. According to the informant, the appellant would hide the heroin under the dash of the Mazda. The informant also stated that one of the distribution centers in Baltimore City was at 1909 Pulaski Street and that the Infinity normally sat in front of 119 Village Mill Court.

On August 20, 1993, Detective Heavner met with the informant and was told by him that the appellant and "NA" were still taking drugs, namely heroin and cocaine, from Apartment 301, Rambling Ridge, into Baltimore City, on a daily basis, between 7:00 and 10:00, and that

Mondays and Tuesdays were the days they would have the most drugs. On Tuesday, August 24, 1993, based on information from the informant, as well as from the previous surveillance, Detective Heavner set up a surveillance at the same location. The appellant was observed getting into the Mazda at approximately 9:15 a.m. The police followed the appellant for a distance and then stopped him, whereupon, a K-9 dog alerted to the presence of drugs in the vehicle. The appellant was arrested and read his rights.

Based upon the information received from the informant, the surveillance, and the information obtained following the arrests of the appellant and Tyrone McCullough, a search warrant was obtained for Apartment 301, 1803 Rambling Ridge Circle. Incriminating evidence was found in the search.

THE LAW

Warrantless arrests are permissible if the police have probable cause to believe that the person has committed, is about to commit, or is committing a crime. *Berryman v. State*, 94 Md. App. 414, 424 (1993). Probable cause means "a fair probability that contraband or evidence of a crime will be found." *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *Illinois v. Gates*, 462 U.S. 213, 218 (1983). *Accord Collins v. State*, 322 Md. 765, 780 (1991); *Birchead v. State*, 317 Md. 691, 700 (1989). In determining whether probable cause exists, hypertechnical analysis divorced from the realities of everyday life has been rejected. *See Potts v. State*, 300 Md. 567, 573 (1984). "In dealing with probable

cause . . . , as the name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Doering v. State*, 313 Md. 384, 403 (1988), *quoting Brinegar v. United States*, 338 U.S. 160, 175 (1949). In determining whether probable cause exists for a warrantless arrest or search, the totality of the circumstances is taken into account. *Malcolm v. State*, 314 Md. 221, 230 (1988).

We have said that it is

> beyond dispute that information furnished to a law enforcement officer by an informant, together with the officer's personal knowledge, may serve as the basis for a warrantless arrest and search incident to that arrest if the trial court is informed "with specificity what the informant actually said, and why the officer thought the information was credible, and the court is satisfied such information was sufficiently reliable and reasonably trustworthy to give the officer, as a prudent man, probable cause to believe that the accused had committed or was committing a felony."

Green v. State, 77 Md. App. 477, 481, *cert. denied*, 315 Md. 223 (1989). *Accord Jackson v. State*, 81 Md. App. 687, 692 (1990).

In reviewing an informant's tip, the proper mode of analysis is to view the facts in their "entirety, giving significance to each relevant place of information and balancing the relative weights of all the various indicia of reliability (and unreliability) attending the tip." *Massachusetts v. Upton*, 466 U.S. 727, 732 (1984). There is an

examination of the facts as a whole to see if they "neatly fit together." *Id.* The question is whether the informant's story and the surrounding facts possess "an internal coherence that give weight to the whole." *Id.* at 734. *Accord Birchead v. State*, 317 Md. at 701-02. The word of an informant is often enough to supply probable cause. *Cf. Adams v. Williams*, 407 U.S. 143, 144-48 (1972) (based on tip from individual known to police officer that person in car was carrying and seizing gun deemed permissible); *Draper v. United States*, 358 U.S. 307 (1959) (informant's tip regarding suspect's physical appearance and prediction of future travel relating to narcotics trafficking, corroborated by police, held sufficient to establish probable cause).

CONCLUSION

The appellant's argument for suppression is that there was no probable cause for his arrest and that the illegal arrest tainted the statements made pursuant thereto, which, in turn, tainted the evidence obtained pursuant to the search warrant. We disagree. The police corroborated much of the information received from the informant and that was sufficient to give the officers probable cause to stop and arrest the appellant. The police need not corroborate suspicious or criminal behavior to have probable cause. As the Supreme Court has stated: "[I]nnocent behavior will provide the basis for a showing of probable cause[.]" *Illinois v. Gates*, 462 U.S. 213, 244 n.13 (1983). *Cf. United States v. Sokolow*, 490 U.S. at 7-9 (even series of acts consistent with innocent travel amounted to reasonable suspicion of drug smuggling when viewed together); *Alabama v. White*, 496 U.S. 325,

331-32 (1990) (independent corroboration by police of sufficient aspects of informer's predictions imparted reliability to other allegations made by informer).

The court did not err in denying the motion to suppress.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

ERNEST PURNELL REYNOLDS, JR.	* In the
	* Court of Appeals
v.	* of Maryland
STATE OF MARYLAND	* Petition Docket No. 67
	* September Term, 1995
	* (No. 789, September Term 1994, Court of Special Appeals)

ORDER

(Filed July 18, 1995)

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: July 17, 1995

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

REPORTER'S OFFICIAL
TRANSCRIPT OF PROCEEDINGS

Hearing

April 12, 1994

STATE OF MARYLAND

VERSUS

ERNEST REYNOLDS

Case Number: 93-CR-3246

BEFORE: The Honorable JOHN G. TURNBULL, Associate Judge

APPEARANCES:

On Behalf of the State:

MR. PETER JOHNSON, ASSISTANT STATE'S ATTORNEY

On Behalf of the Defendant:

MR. HOWARD L. CARDIN, ESQUIRE

* * *

[p. 64] that "NA" and he says yeah. Is he going to have drugs on him? "Yeah, some." He has no standing to object to what this gentleman says and the officers just use that as more probable cause as if they didn't already have enough to stop Mr. McCullough.

THE COURT: All right. Obviously, and that's why this case is being litigated, is the fact that this is not

one of the stronger cases, but in drug investigations many times because of the very nature of the secretive dealings of the individuals that are involved it is difficult to come up with black and white without having some gray area involved.

The Court is a little bit concerned about the fact that the only information I have is that Detective Heavner says that Special Agent Bonner of the FBI has a reliable informant and he met with them to provide information on drugs being distributed in Baltimore County. I guess if I accept that, that is sufficient to accept the fact that he is an informant, but it is pretty thin. I am not sure the State shouldn't have gone further and had Detective Bonner in here. Don't misunderstand me. I am talking – I am sure if Special Agent Bonner got on the witness stand, he would qualify the informant without any hesitation and there is sufficient knowledge so there would not be any doubt in anybody's mind.

My point being that that would have been in my opinion preferable. I do not think that makes the informant bad. The [p. 65] informant goes on and the State is a little bit more thorough in what the information that was corroborated by the Detectives because the Defense wants to brush over it and I do not blame them, but they do. They give an apartment number and an address. They say drugs are being stored there. They give two automobiles. It is interesting to note, and I think it hurts the Defense more than it helps them, the fact that one of the cars was not registered. It was registered to somebody else and the Defendant was driving it and that's what the informant said, who would be driving that particular car even though it was not his particular car. They do follow

him on several occasions and they do go down to the exact location in Pigtown where they are told that they are going to drop off drugs. They narrow it down to the two days of the week that are the heaviest days where most drugs are delivered. It says that they are taking them down daily. They confirm within a reasonable period of time the hours that this is done, and on the day of the arrest everything that has been held true in the past and has been advised by the informant or Special Agent Bonner through the informant on several occasions the last being on August 20th is in fact true.

It is not the strongest case in the world, but I think it is sufficient to give the officers probable cause to stop and arrest the Defendants in this case. I do not think it is such that the Court should suppress it. It may pose a serious [p. 66] question for the trier of fact, but that's not for me to decide. The warrant was stopped and once I find that, I do not think I have to decide whether the search warrant was good or bad. I feel the search warrant followed through was good. There is no indication whatsoever that anything the two Defendants said were coerced.

I find as a fact that the officers read them Miranda rights to the two individuals and up until the time that they said I don't want to talk to you anymore, that they were in fact good and valid statements. They were not coerced by anyone and are in fact admissible.

The motion to suppress the statements are denied as well.

Have a nice day.

(WHEREUPON, the Court took up other matters.)